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HOWARD PAPERNE, P.C.
The Manchester Professional Building
9322 Manchester Road
St. Louis, Missouri 63119
(314) 961-0097, Ext. 13
FAX (314) 961-0667
Cheryl Schaper, Legal Assistant, Ext. 25

WT 99-2137
99-217
96-98,

December 10, 1999

RECEIVED

Mr. William Kennard, Chairman
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

JAN 18 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RE: Comments in WT Docket 99-217 and CC Docket 9698

Dear Mr. Kennard:

Enclosed please find the reply comments of the City of Maryland Heights in the above captioned.

Very truly yours,



Howard Paperner

HP/crs
Enclosure

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

Promotion of Competitive Networks)
in Local Telecommunications)

WT Docket No. 99217

Wireless Communications Association)
International, Inc. Petition for Rulemaking)
to Amend Section 1.4000 of the)
Commission's Rules to Preempt)
Restrictions on Subscriber Premises)
Reception or Transmission Antennas)
Designed to Provide Fixed Wireless)
Services)

Cellular Telecommunications Industry)
Association Petition for Rulemaking and)
Amendment of the Commission's Rules)
To Preempt State and Local Imposition of)
Discriminatory and/or Excessive Taxes)
And Assessments)

Implementation of the Local Competition)
Provisions in the Telecommunications)
Act of 1996)
_____)

CC Docket No.: 96-98

REPLY COMMENTS OF THE CITY OF MARYLAND HEIGHTS

Howard Paperner, P.C.
R. Henry Branom, Jr., P.C.
DeVoto, Paperner, Branom and Nalick
The Manchester Professional Building
9322 Manchester
St. Louis, MO 63119
(314) 961-0097,

Counsel to the City of Maryland Heights

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REPLY COMMENTS OF THE CITY OF MARYLAND HEIGHTS

The City of Maryland Heights, State of Missouri, a municipal corporation of Missouri, has been advised that the City has been cited in the comments of Cablevision Lightpath, Inc. and NEXTLINK Communications, Inc. in the matter styled above, though not by NEXTLINK. The City finds both the statements of facts and law contained in those comments to be erroneous. On page four of their comments, NEXTLINK, et al. cite a number of trial court cases from various Federal Districts which they consider are limits on

local government's authority to manage their rights-of-way imposed by Section 253 of the Telecommunications Act of 1996. What is missing from their citations is the decision of the United States Court of Appeals for the First Circuit in Cablevision vs. Public Improvement Commission of the City of Boston, 183 F.3d 88, No. 99-12222, August 25, 1999.

This case of the Court of Appeals states in part that Congress intended the phrase "competitively neutral" to not place an affirmative obligation on local authorities. In light of this Appellate decision, this Commission should not use this proceedings to prohibit municipalities from adopting regulations concerning carriers use of rights-of-ways or dealing with the imposition of fee requirements and municipal revenues.

As a matter of both State and Federal law, many incumbent utilities are "grandfathered" in certain matters that prohibit regulation by local government. This may be true in our City. What is clear is that NEXTLINK Communications and incumbent Southwestern Bell are not similarly situated, nor are they subject to the same local regulatory and fee obligations. Southwestern Bell now occupies the public rights-of-way in the City of Maryland Heights free of charge whether the City of Maryland Heights permits it or not. Southwestern Bell is subject to a municipal tax on telecommunication providers under our business license statutes and the City does not characterize that as payment for use of the rights-of-way. It is purely for a business license. NEXTLINK is also subject to this license requirement. NEXTLINK offers services that are not offered by Southwestern Bell and therefore, the position of the City is that again they are not at this time similarly situated. (As they have admitted in our present litigation).

The City has agreed pursuant to the litigation pending, NEXTLINK Missouri, Inc. vs. City of Maryland Heights, Civil Action Number 4:99CV01052CET(Eastern District

Missouri) to allow NEXTLINK to use the rights-of-ways of the City pending the outcome of the litigation. NEXTLINK's "desperation" is not the fault of the City, but certainly the fault of NEXTLINK, when it placed its "switch" for their entire St. Louis network in Maryland Heights without first obtaining any agreement with our City. Such lack of business and construction planning cannot be construed as the fault of the City, but must be squarely shouldered by NEXTLINK.

Nothing in the comments of NEXTLINK as it applies to the City of Maryland Heights, Missouri should be used as any basis by the Federal Communications Commission to limit local municipalities from managing their rights-of-way and collecting their revenues.